

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

GEORGE ASHLEY §  
v. § CIVIL ACTION NO. 6:15cv554  
TONY HARRLE, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff George Ashley, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The magistrate judge ordered Ashley pay an initial partial filing fee of \$34.86, pursuant to 28 U.S.C. §1915(b). When Ashley did not comply, the magistrate judge recommended that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. Ashley filed a response to this motion asking for a “formal dismissal” of his lawsuit.

The Court has reviewed the pleadings and the report of the magistrate judge and has determined that this report is correct. Nonetheless, Ashley’s request for voluntary dismissal should be granted. *See Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977) (plaintiff has absolute right to dismiss his complaint under Rule 41(a), Fed. R. Civ. P., prior to the filing of an answer or motion for summary judgment); *Thomas v. Phillips*, 83 F.App’x 661, 2003 WL 22965565 (5th Cir., December 17, 2003) (citing *Carter*).

Ashley also filed a motion to correct the docket and for a refund of his filing fee, but he refers to another lawsuit, cause no. 6:15cv1157, in which he paid an initial partial filing fee of \$13.92. No

filings fee was paid in the present case and he has not shown that correction of the docket is necessary. This motion is without merit. It is accordingly

**ORDERED** that the Plaintiff's request for voluntary dismissal of his civil action, contained within his response of April 25, 2016 (docket no. 7) is **GRANTED**. It is further

**ORDERED** that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** on the motion of the Plaintiff. Finally, it is

**ORDERED** that any and all motions which may be pending in this action, specifically including but not limited to the Plaintiff's motion to correct and docket and for refund of the filing fee (docket no. 8) are hereby **DENIED**.

SIGNED this 20th day of May, 2016.



---

MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE